

COPY

Case: Spencer Norman, et al v. Camden County,
et al

Transcript of Sergeant Brian Fiene

Date: October 21, 2013

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Exhibit

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1 **THE VIDEOGRAPHER:** We're on the record at 11:03.
2 Today's date is October 21st, 2013. This is the
3 deposition of Sergeant Brian D. Fiene --

4 **THE WITNESS:** Yes.

5 **THE VIDEOGRAPHER:** -- to be taken in the matter
6 of Spencer Norman, et al. versus Camden County, et al.,
7 Cause Number 2:12-CV-04210. At this time would counsel
8 please identify themselves for the record.

9 **MR. KEANE:** Ryan Keane, Simon Law Firm on behalf
10 of the Plaintiff.

11 **MR. HENSON:** Keith Henson on behalf of all of the
12 Defendants.

13 **THE VIDEOGRAPHER:** Thank you. Would the court
14 reporter please swear in the witness.

15 Brian D. Fiene,
16 of lawful age, being produced, sworn and examined on
17 behalf of the Plaintiffs, depose and saith:

18 EXAMINATION

19 **QUESTIONS BY MR. KEANE:**

20 **Q.** Sergeant, would you please state your full name
21 for the record?

22 **A.** Brian David Fiene.

23 **Q.** Okay. And your current address?

24 **A.** P. O. Box 794, Camdenton, Missouri 65020.

25 **Q.** And what is your current occupation?

1 A. I believe about five minutes, sir.

2 Q. Was there anyone else in your squad car?

3 A. No, sir.

4 Q. And when you received the call, what information
5 was relayed to you?

6 A. The call came out and was dispatched as a male
7 subject who had forced his way into someone's house and
8 the homeowner had somehow managed to struggle or fight
9 with him and get him back outside of their residence and
10 now he was beating on the residence trying to get back in
11 again.

12 Q. Okay. And that's the information you received
13 from the dispatcher at the time?

14 A. Yes, sir.

15 Q. Do you know who the first officer was to arrive?

16 A. Deputy Brandon Dziadosz.

17 Q. His last name is pronounced Dziadosz. It's
18 spelled D-z-i-a-d-o-s-z; is that correct?

19 A. Yes, sir.

20 Q. And before you arrived, were you in communication
21 with Officer Dziadosz?

22 A. I don't think I had any contact with Officer
23 Dziadosz until I actually arrived.

24 Q. Any other officers on the scene before you
25 arrived?

1 Q. Okay. What about his -- Could you see his face
2 and his eyes?

3 A. I could see his face. I couldn't really see his
4 eyes.

5 Q. So Officer Dziadosz had his TASER drawn and you
6 said the laser was being -- beam from the TASER was on
7 Mr. Norman's body, the target laser?

8 A. I assume it was. I don't know that it was on Mr.
9 Norman's body. I could just see that the laser was on on
10 Deputy Dziadosz TASER. I could see that the red light
11 was on, so I knew he had the laser on, but where it was
12 pointed, I don't know for sure.

13 Q. Okay. So you at that point -- What happened
14 after Officer Dziadosz had the TASER drawn and was
15 continuing to talk to Mr. Norman, what did you do?

16 A. Well, since Mr. Norman was not complying with
17 Deputy Dziadosz's request and orders, as I closed the
18 distance, I drew my TASER from probably about 15 feet
19 away and I continued to close the distance towards Mr.
20 Norman because I began walking right directly towards him
21 and he was walking away from Deputy Dziadosz because he
22 was in the middle of Dziadosz and I. So he was walking
23 towards me at that point and then I began issuing
24 commands for him to stop and for him to put his hands on
25 his head and for him to quit moving away and quit

1 resisting, that sort of thing, and --

2 Q. Okay. Was Officer -- or strike that.

3 Was Mr. Norman speaking at all at that point?

4 Was he responding in any way verbally to either you or
5 Officer Dziadosz?

6 A. I didn't heard -- I heard nothing intelligible
7 come from Mr. Norman addressed to Deputy Dziadosz or I.

8 Q. What was he saying? Before he was tasered, was
9 he speaking at all?

10 A. He -- He was mumbling, doing some mumbling. He
11 was doing a lot of what I described as growling. At one
12 point the only word that he said that I understood, but
13 they weren't addressed to myself or Deputy Dziadosz, but
14 at one point he stopped walking for a second and looked
15 up at the sky and said something about God or Jesus and
16 the Holy Ghost or something to that effect, but then he
17 put his hands down and kept walking away again.

18 Q. And is that the only thing that you heard that
19 was intelligible from him, was God, Jesus, Holy Ghost?

20 A. Yes.

21 Q. Did that mean anything to you at that particular
22 moment?

23 A. I suspected he was probably under the influence
24 of narcotics.

25 Q. Could you smell any alcohol or drugs when you

1 were in his vicinity before you tased him?

2 **A.** No, sir. I wasn't close enough to smell
3 anything.

4 **Q.** So he -- Mr. Norman started walking towards you
5 away from Officer Dziadosz. You at that point had your
6 TASER drawn, correct?

7 **A.** Correct.

8 **Q.** And you were giving him verbal commands?

9 **A.** Correct.

10 **Q.** And what were those commands?

11 **A.** I told him several times to stop. I told him at
12 least two or three times to put his hands on his head. I
13 told him at least a couple times after that to get on the
14 ground. I don't know how many commands I gave him.
15 Probably at least six to eight all together.

16 **Q.** And he wasn't -- And there was no response by him
17 to any of these commands?

18 **A.** That's correct.

19 **Q.** You said that you could tell he was under the
20 influence of narcotics of some sort, that's what you
21 suspected?

22 **A.** That's what I suspected, yes.

23 **Q.** And did you -- Is that suspicion you had based on
24 his non-responsiveness, his statement about God and Jesus
25 Christ -- Well, let's narrow it down. What was your

1 suspicion based on?

2 **A.** It was based on his refusal to comply. It was
3 based on his behavior, his actions, his talking to God.
4 It was based on the fact that he was in boxer shorts when
5 the temperature was probably in the 40s and it was based
6 on the fact that he was running around at 4:30 in the
7 morning, forcing his way into other people's houses. It
8 was based on lots of things. Experience, training. It
9 was based on the fact that a lot of people that I deal
10 with that act similar to him are under the influence of
11 drugs.

12 **Q.** Got it. Anything else?

13 **A.** No, sir.

14 **Q.** At what point did you decide to discharge your
15 TASER?

16 **A.** After I had given him numerous instructions to
17 comply and stop and he had refused all of them, I then
18 activated the TASER, put my -- the laser from the TASER
19 on his chest and told him if he didn't stop, I was going
20 to taser him.

21 **Q.** And how far were you at that point?

22 **A.** At that point about eight feet.

23 **Q.** And when you said I'm going to TASER you, did
24 that elicit any response at all?

25 **A.** Yes. He looked down -- Mr. Norman looked down at

1 the red laser light on his chest from my TASER and he
2 said, "Bring it on. I ain't fucking scared of that."

3 Q. Did Officer Dziadosz hear that?

4 A. I don't know.

5 Q. How far was Officer Dziadosz from you at that
6 point?

7 A. From me? Probably -- Probably close to 20 feet.

8 Q. Did you consider using any other techniques to
9 get Mr. Norman to comply with your request to get down
10 and to submit to custody?

11 A. At that point, no.

12 Q. Why did you decide to first consider using your
13 TASER instead of any other means available?

14 A. Because I was trying to not hurt Mr. Norman.

15 Q. So you felt that it would be safer to use a TASER
16 than to use a billy club or a nightstick?

17 A. Absolutely.

18 Q. Did you feel like you and Officer Dziadosz could
19 physically take Mr. Norman into custody without the use
20 of a TASER?

21 A. I can't say that I felt that way, no. If the
22 subject was under the influence of drugs as I suspected,
23 he could be 10 times stronger than Dziadosz and I put
24 together.

25 Q. Did you recognize before you tased him that he

1 I'm not a small guy, I'm a pretty big guy, but I've
2 almost lost a couple times, people a lot smaller than me.

3 Q. Had you ever seen Mr. Norman before this
4 incident? Ever seen him in Camden County?

5 A. No.

6 Q. You recognize him at all?

7 A. Not that I know of.

8 Q. And you said you've used your TASER about eight
9 to 10 times in your 16 years -- or since 2003. Excuse
10 me. How many times have you used your TASER since this
11 incident?

12 A. Once.

13 Q. Once. All right. So you at that -- at the
14 moment that you decided to use the TASER, it was right
15 after he said -- and what was his quote again, I don't
16 give -- I'll let you say it. What did he say?

17 A. He said, "Bring it on. I ain't squared -- I
18 ain't fucking scared of that."

19 Q. Okay. And that's -- At that moment you decided
20 to tase him?

21 A. Yes.

22 Q. Okay. And when you tased him, he was facing you
23 and walk me through what happened.

24 A. He was facing me, but kind of moving slightly at
25 an angle, but, nevertheless, yes, I struck him in the

1 torso with the TASER and he immediately fell to the
2 ground and began rolling around hollering and -- I don't
3 know what he was hollering. It was unintelligible, but
4 he was hollering and I let the TASER finish its
5 predetermined five second cycle that you get when you
6 pull the trigger on the TASER. It goes for five seconds
7 and then stops. So he rolled around for that five
8 seconds flailing and hollering and as soon as the five
9 second cycle finished, he immediately jumped back up
10 again and --

11 Q. Okay. And when he jumped -- I'm sorry. I didn't
12 mean to it cut you off. He jumped back up onto his feet?

13 A. Correct.

14 Q. Okay. And what happened then?

15 A. I again told him several times to get back down
16 on the ground and put his hands behind his back and he
17 was under arrest, he needed to stop resisting, get back
18 down on the ground. He did not do that. He was not
19 compliant at all, so I squeezed the trigger on the TASER
20 and applied another five second cycle and he immediately
21 fell to the ground again and rolled around and hollered
22 and that sort of thing for the five seconds. When that
23 five second cycle was over, he immediately jumped to his
24 feet again.

25 Q. Okay.

1 **A.** I then told him again several times to stop and
2 to get back down on the ground, to put his hands behind
3 his back and he did not comply to any of that. So I
4 attempted to squeeze the trigger to give him another five
5 second cycle and nothing happened and it was at that
6 point that I realized that during his moving around
7 flailing and trying to go away from us that he had
8 somehow broken the wires that lead from the TASER to the
9 TASER probes that were stuck in his chest.

10 **Q.** Okay.

11 **A.** Once I saw --

12 **Q.** And then what happened?

13 **A.** Once I realized that the wires were broken, I
14 could no longer effectively use the probe, I then removed
15 the cartridge from the front of the TASER and threw it on
16 the ground and then I ran up to him and attempted to
17 drive tun him with the TASER twice in the back because he
18 was trying to run away from me.

19 **Q.** It's using the same type of TASER, but you
20 removed the cartridge from the top and actually make
21 physical contact with the TASER to the suspect's body?

22 **A.** Correct.

23 **Q.** Okay. And what happened when you touched his
24 body with the TASER?

25 **A.** Well, I attempted to drive stun him a couple of

1 times. I don't know how many of those two times actually
2 made contact with him. I'm unable -- I was unable to
3 tell because he had no reaction. It had no effect
4 whatsoever.

5 Q. What was he doing at that moment?

6 A. Trying to go away, walking away from me, and
7 flailing his arms.

8 Q. He did not -- And you call that -- I'm sorry --
9 dry stunning?

10 A. Drive stunning.

11 Q. Drive, drive stunning?

12 A. Correct.

13 Q. So drive stunning was not effective, in your
14 observation?

15 A. That is correct.

16 Q. And what did you do then?

17 A. Then -- Then is when --

18 Q. I'm sorry. Let -- Hold on. I'm sorry. Let me
19 back up for a second. I didn't mean to cut you off
20 there, but let me ask you this. Was the TASER -- When
21 you were drive stunning him, was the TASER, could you
22 tell the TASER was working? I mean, when I say working,
23 could you say -- could you tell it was operating
24 properly?

25 A. When I attempted the first drive stun in his

1 upper left shoulder blade area, yeah, it was working then
2 because I heard it. When I -- I activated it before it
3 made contact with his skin and I heard the clicking,
4 popping sound it makes, the electric arc, and then I
5 pressed it to his skin. That had no effect and then I
6 attempted to drive stun him again lower on his back and
7 that one I didn't hear or see or have any reaction out of
8 him, so I don't know if it actually worked or not.

9 Q. Okay. And was it at that moment he started to
10 move away from you?

11 A. He was already moving away from me at the time.

12 Q. Okay.

13 A. He just continued to move away from me.

14 Q. Was he running at that point?

15 A. No. He was just walking fast.

16 Q. Okay. And was he speaking at all?

17 A. Nothing intelligible that I know of.

18 Q. And what was Officer Dziadosz doing while you
19 were drive stunning him, drive stunning Mr. Norman?

20 A. At that point just observing. He was kind of
21 standing there.

22 Q. He had not discharged his TASER at any point?

23 A. No, sir.

24 Q. So when Mr. Norman was moving away from you and
25 the drive stunning was not effective, what did you do

1 then?

2 **A.** I told him a couple more times or so to get on
3 the ground and to stop and stop resisting. To which he
4 did not comply. He continued to move away from me,
5 flailing his arms and kind of swinging at me. He was
6 swinging backwards as he was moving away, so I don't know
7 if he was just flailing his arms or if he was actually
8 trying to strike me or what, but at that point I used my
9 flashlight and I struck him in his right rear calf with
10 my flashlight in an effort to bring him down to the
11 ground.

12 **Q.** Now -- and just so I don't forget to ask, did you
13 ever at any point observe Mr. Norman having any type of
14 weapon whatsoever?

15 **A.** No, sir.

16 **Q.** Anything that could be used as a weapon?

17 **A.** No, sir.

18 **Q.** So you struck the back of his calf with your
19 flashlight. What did he do then?

20 **A.** Nothing. He continued to walk away just like
21 before.

22 **Q.** And then what happened?

23 **A.** I struck him in the calf, the right rear calf
24 again with the flashlight.

25 **Q.** And what was his response?

1 A. None. He continued to walk away. He didn't say
2 or do anything.

3 Q. And then what happened?

4 A. Well, I determined that the TASER was not
5 effective, that hitting him with the flashlight was not
6 effective and so, basically, I just jumped on him.

7 Q. Jumped on his back?

8 A. Yeah. I jumped on him and manhandled him to try
9 and wrestle him to the ground and Deputy Dziadosz then
10 helped and kind of helped manhandle him, too. We both
11 laid hands on him.

12 Q. How much time had elapsed, approximately, before
13 -- from the point that you saw Mr. Norman until you first
14 discharged your TASER?

15 A. Probably one to two minutes.

16 Q. When you jumped on his back, were you in the
17 street, on the sidewalk, or in the grass?

18 A. We were in the grass.

19 Q. So you jumped on his back. Did he immediately
20 come down to the ground?

21 A. No. He wrestled away, pulled away and was still
22 flailing his arms and trying to move away from us. Not
23 running, but trying to trying to get away.

24 Q. Was he speaking at any point when you -- after
25 you jumped on him?

1 **A.** Nothing that I heard that was intelligible, no.
2 He was doing a lot of growling still.

3 **Q.** And mumbling and things that you couldn't make
4 out?

5 **A.** Correct.

6 **Q.** So he was able to wrestle away from you and Mr.
7 -- and Officer Dziadosz, correct?

8 **A.** Correct.

9 **Q.** And what did you do then?

10 **A.** He then lost his balance and fell down on the
11 ground and --

12 **Q.** Okay.

13 **A.** And when he did, I went to the ground with him
14 and got him facedown and got on top of him and I sat on
15 his butt.

16 **Q.** You sat on his butt with your butt?

17 **A.** Yes.

18 **Q.** Okay. And what was Officer Dziadosz doing at
19 that point?

20 **A.** Dziadosz ran around to Norman's left side and my
21 left side and tried to -- was trying to get Norman's left
22 arm out from under him. He had both of his arms
23 underneath him and wouldn't give them to us so that we
24 could handcuff him. Deputy Dziadosz was trying to get
25 the left arm out from under him.

1 sometimes your arm, correct?

2 A. Correct.

3 Q. Any other techniques that you were using?

4 A. No.

5 Q. So you never used the prone position technique?

6 A. No.

7 Q. You never took your knee and applied it to any
8 part of his back while he was facing down?

9 A. No.

10 Q. Before or after he was handcuffed?

11 A. No, sir.

12 Q. Okay. So you're still sitting on his butt and
13 you don't have his arms yet. What happened then?

14 A. Well, after struggling with him like that for I
15 don't know how long it was, maybe a minute or two or
16 something, we kept telling him to give us his hands so we
17 could handcuff him and to stop resisting. We said those
18 kind of things numerous times. He maintained keeping his
19 arms underneath him and then the next thing of any
20 significance that happened other than that was all of a
21 sudden he did a pushup with me on top of him, and by that
22 I mean he extended both arms completely straight and
23 locked his elbows and did a pushup with me on top of him
24 and he was trying to get up and I was trying to push him
25 back down and Dziadosz was pushing down on his back with

1 his hands trying to push him back down and neither one of
2 us could push him back down to the ground.

3 Q. So then what happened?

4 A. That's when I struck him in the right elbow with
5 my flashlight, trying to break his arm.

6 Q. Was that your intent, was to break his arm?

7 A. Yes, sir, it was.

8 Q. And when you say break, you mean like break the
9 bone?

10 A. Yes, sir.

11 Q. Okay. Is that a technique that the department
12 endorses?

13 A. If necessary, yeah. Uh-huh.

14 Q. And why did you feel it was necessary to attempt
15 to try to break his right arm at that point?

16 A. Because I was running out of options on how to
17 get him under control and I didn't want to have to kill
18 him.

19 Q. Okay. Had he struck you before you used your
20 flashlight to hit his right arm?

21 A. No, he had not.

22 Q. Had he struck Officer Dziadosz?

23 A. No, sir.

24 Q. So you used the flashlight and struck his right
25 elbow?

1 A. Yes.

2 Q. And what happened?

3 A. Nothing.

4 Q. He didn't -- His arm was still locked?

5 A. Yes, sir.

6 Q. Still in the pushup position?

7 A. That's correct. It had no effect.

8 Q. And then what happened?

9 A. Basically, we just continued struggling with him
10 for another few seconds and kind of eventually got him
11 facedown on the ground again. I worked pulling his arm
12 trying to pull it out from under him and make him lose
13 his balance on his arms to where he could fall face first
14 back into the ground and that's eventually what we got
15 accomplished and then --

16 Q. While you were struggling though to put handcuffs
17 on him, were there any other officers on the scene at
18 that point besides you and Officer Dziadosz?

19 A. About that time is when Deputy Watson arrived.

20 Q. And what did Officer Watson do?

21 A. She came over and assisted trying to get that
22 right arm around to me so I could cuff it while Deputy
23 Dziadosz was continuing to try and get the left one. And
24 she placed her right knee on his back in order to help
25 keep him down on the ground and we struggled with him

1 like that for not very long then probably another 30 to
2 60 seconds and we had his wrists in handcuffs. I had to
3 put the left wrist in one set of handcuffs and the right
4 wrist in a different set of handcuffs because I couldn't
5 get his hands close enough together to use one pair, so I
6 used two pairs and then cuffed the two pairs of handcuffs
7 together.

8 Q. Have you ever done that before?

9 A. Only on large individuals where their arms just
10 physically would not go back that far, but with him it's
11 just because we didn't have the strength to get his that
12 close together. He was just stronger than we were.

13 Q. Okay.

14 A. He was smaller, but we couldn't get them
15 together.

16 Q. Did you -- Besides striking his right arm with
17 your flashlight and his calf -- Was it his left calf you
18 said?

19 A. His right calf.

20 Q. Right calf? You struck his right calf and you
21 struck his right arm with your flashlight. Did you
22 strike any other part of his body with your flashlight at
23 any other point in time?

24 A. No, sir.

25 Q. Did you ever use your nightstick or billy club?

1 walking, that kind of swinging?

2 A. Not like walking.

3 Q. So his arms were more fully extended like a wing
4 span type of swing?

5 A. Yes.

6 Q. Were they going up in the air or out to the
7 sides, above his head?

8 A. All the above.

9 Q. All those directions?

10 A. All of the above.

11 Q. What did -- After you were finally able to
12 handcuff him, what happened? Immediately -- Immediately
13 after getting him handcuffed, what walk me through what
14 happened.

15 A. Okay. As soon as I got the handcuffs applied to
16 where I knew he was secure, I immediately raised up off
17 of him and stood up and Deputy Dziadosz I believe
18 immediately stood up. Deputy Watson remained knelt down
19 with one knee on the ground and one knee on his back for
20 about one or two more minutes until he stopped trying to
21 get up and stop struggling and that sort of thing, until
22 he calmed down.

23 Q. Did Mr. Norman, once you stood up after you
24 handcuffed him, as soon as you stood up did he -- was he
25 saying anything? Was he still mumbling? Was he still

1 Q. Was it muddy?

2 A. No, not really. Maybe a little bit because of
3 the grass being damp or something, but not necessarily.

4 Q. So Officer Dziadosz said, and Officer Watson,
5 that Mr. Norman was breathing and when they told you
6 that, what did you do then?

7 A. Like I said, I walked over towards the tall grass
8 to start looking for my TASER, cartridge tray I needed to
9 recover because it was evidence, but I also then removed
10 my walkie-talkie and told our dispatch to start an
11 ambulance to our location.

12 Q. And why did you think an ambulance was necessary?

13 A. Well, I didn't really know that it was necessary,
14 but as a safety precaution, I wanted them to check Mr.
15 Norman just to make sure that he wasn't hurt from
16 resisting with us during our struggle. He had been
17 tasered. He had been hit in the elbow. He had been hit
18 in the calf. He had struggled with us and rolled around
19 and the RP, the reporting party, apparently had punched
20 him before we ever got there, so I just wanted to make
21 sure he was okay, he didn't have anything wrong with him
22 that I didn't know about or of any significance.

23 Q. Okay. So made a phone call to get an ambulance
24 on the scene. Then what happened?

25 A. Oh, it was a call on my walkie-talkie. I just

1 Q. But would you agree that the policies, rules, and
2 procedures that are in place in Camden County is for
3 safety?

4 **A.** Yes.

5 Q. Safety of both officers and citizens?

6 **A.** Yes.

7 Q. If Camden County had a policy about dealing with
8 emotionally disturbed persons, would you follow that?

9 **A.** Of course.

10 Q. And why is that?

11 **A.** Because like any other policy, I would follow it
12 as best I could all the time, as long as I was able,
13 sure.

14 **MR. KEANE:** All right. I don't think I have any
15 other questions.

16 **MR. HENSON:** We don't have any questions, Ryan,
17 but we will read and sign.

18 **THE VIDEOGRAPHER:** This concludes the deposition.
19 We're off the record at 1:43. Thank you, all.


20 (Witness excused.)

1 Comes now the witness, Sergeant Brian Fiene,
2 and having read the foregoing transcript
3 of the deposition taken on 10/21/2013,
4 acknowledges by signature hereto that it is a
5 true and accurate transcript of the testimony given
6 on the date hereinabove mentioned.

7

8

9



10 Sergeant Brian Fiene

11

12 Subscribed and sworn to me before this

13 6 day of December, 2013.

14 My Commission expires 5/16/2017

15

16

17



18 Notary Public

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